

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
Hongkong Post–United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2013-22

PUBLIC REPRESENTATIVE COMMENTS ON POSTAL SERVICE
NOTICE CONCERNING FUNCTIONALLY EQUIVALENT INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENT WITH A FOREIGN POSTAL OPERATOR

(December 10, 2012)

The Public Representative hereby provides comments pursuant to Order No. 1557.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Notice of its entering into an additional Inbound Multi-Service Agreement with a Foreign Postal Operator.² The Notice concerns the inbound portion of a bilateral agreement with Hongkong Post for the delivery of air CP³ from Hong Kong to the United States. Notice at 1. The Postal Service intends for the Hongkong Post Agreement to take effect on January 1, 2013, and to remain in effect for one year unless terminated earlier. Notice at 4.

¹ Notice and Order Concerning Type Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Hongkong Post), November 29, 2012 (Order No. 1557).

² Notice of the United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, November 28, 2012 (Notice).

³ “CP” is an abbreviation for the French term “colis postaux”, which means “parcel post” in English.

On September 29, 2010, in Order No. 546, the Postal Regulatory Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the Competitive Product List.⁴ The Commission ordered that the Strategic Bilateral Agreement between the United States Postal Service and Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV (TNT Agreement) (CP2010-95) be part of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* The Commission also ordered the TNT Agreement as “the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.” *Id.* The Commission has subsequently approved several additional bilateral agreements as part of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product.

In its Notice, the Postal Service seeks to include the Hongkong Post Agreement as part of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. It asserts that the agreement is functionally equivalent to the TNT Agreement in MC2010-34 and further maintains that it is compliant with 39 U.S.C. §3633 based on supporting documentation filed with the Commission.⁵ 39 U.S.C. §3633 (a) requires that competitive products are not subsidized by market dominant products, cover their attributable costs, and collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service. Notice at 7. In

⁴ PRC Order No. 546, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010 (Order No. 546).

⁵ The supporting documentation included a copy of the financial worksheets, an unredacted copy of the agreement, a certified statement required by 39 C.F.R. §3015.5(c)(2), a redacted copy of Governors’ Decision No. 10-3, and an application for non-public treatment of unredacted material.

39 C.F.R. § 3015.7 (c), the Commission determined this percentage to be 5.5%. The Commission reconfirmed this percentage in Order No. 1449.⁶

COMMENTS

The Public Representative has reviewed the Postal Service's Notice, the unredacted Hongkong Post Agreement, and the supporting financial model filed under seal with the Notice. The Public Representative has also carefully reviewed previous filings and Orders related to this Notice as well as the provisions of 39 U.S.C. §3633 and 39 C.F.R. §3015.5.

Functional Equivalency. Based upon her review, the Public Representative concludes that the Hongkong Post Agreement is functionally equivalent to the TNT Agreement. The Postal Service does identify some differences between the two agreements, but these differences do not impact any cost or market characteristics that would differentiate the two agreements at any substantive level. Notice at 5 and 6. The Public Representative would, however, simply highlight for the Commission one difference between the two agreements. This difference does not impact the functional equivalency of the two agreements, but is notable.

The Hongkong Post Agreement does not include the Guiding Principles contained in Article 2 of the TNT Post Agreement. These Guiding Principles, *inter alia*, require that "the Parties agree to work together to improve the quality of postal services between TNT Post and the United States in order to better serve the market. In particular, the Parties agree to provide access to each other's operating networks and

⁶ PRC Order No. 1449, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, Docket No. RM2012-3, August 23, 2012.

services in such a way that for each service provided: (i) excellence in quality of service performance will be attained and maintained; (ii) the flexibility required to meet changing market and logistical conditions will be supported; (iii) the costs to each Party of providing services will be minimized; and (iv) settlement and payment processes will be electronically-based to the extent practicable, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.”

While the Public Representative does not question the Postal Service’s and Hongkong Post’s commitment to improving quality of service and cost reductions in particular, setting out these principles in such bilateral agreements serves as an important roadmap for the objectives of such agreements. Quality of service, cost reduction, flexibility in the market, and process efficiency should be as important as rate setting. In today’s postal market, service quality, reliability and ease-of-use can be just as important to the consumer as price. Within the Universal Postal Union, EMS Cooperative, and Kahala Group, quality of service is linked to payment between postal administrations through a pay-for-performance system for parcels and International Express Mail. The fact that provisions addressing quality of service improvements, cost reductions, and process improvement are specifically excluded from the Hongkong Post Agreement is somewhat disappointing. Pay-for-performance provisions, in particular, based on delivery within established delivery standards already have a proven track record of improving service quality for International Express Mail and letter post service that could also be applied to parcel post.

Statutory Criteria. The Public Representative concludes that the Hongkong Post Agreement meets the three relevant criteria of 39 U.S.C §3633 (a). That is, air parcels

in the agreement are not cross-subsidized by market dominant products and cover their attributable costs. They should also allow the Postal Service's competitive products to contribute collectively to the Postal Service's institutional costs, or at least should not prevent an appropriate contribution to overhead.

While legally-speaking these three statutory criteria are met based on a thorough review of the financial workpapers and source documentation, the Public Representative is concerned that the Hongkong Post Agreement will not provide any meaningful contribution towards the Inbound Competitive Multi-Operator Agreements 1 product as a whole. Therefore, contributions from competitive products to the Postal Service's institutional costs would need to be made up by other competitive products.

Furthermore, while the Postal Service has included a reasonable cost contingency in its calculations, even a modest upward shift in the average weight of a postal parcel from Hong Kong to the United States during the contract period will impair the Postal Service's ability to meet the cost coverage requirement of 39 U.S.C. §3633 (a)(2). The Commission should therefore give very careful consideration to the rates included in the Hongkong Post Agreement and related cost coverage.

The Public Representative provides these comments for the Commission's consideration.

Respectfully submitted,

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